(b) being the tenant, lessee, occupier, or the persons in charge of any premises knowingly permits such premises or any part thereof to be used as a brothel; or

(c) being the owner of any premises, or the agent of such owner, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or part thereof as a brothel, shall be guilty of an offence."

The material part of the magistrate's record is as follows:

"Charge read and explained to accused.

Accused: I plead guilty I ask court to decide. People called woman there.

Pros.: On the 21st of July, 1964 at about 11 a.m. P. 1 Santoh Singh and police party carried out routine check at Sarawak Hotel, Padungan Road, Kuching. He went into a room No. 5 he found the accused and several others at the game of Mahjong. He then checked the register after which he checked room 6 and found a man and a woman indecently dressed inside. Crossed checking in the register the name of the woman was not entered. Only entry made on the man. Both admitted that they used room No. 6 for sexual intercourse. On checking it was found out that the accused was the owner of the said premises and he was present when the incident occurred. It was also found out that the man and the woman had no relationship to each other.

Accused: They closed the door. I do not know. They had just come. I was busy starting playing majong. I do not want to have the case tried. Up to your honour to decide. I ask for leniency.

Court: The accused after the charge have been read and explained to him he pleaded guilty. But after the facts have been explained to him he said, 'they closed the door. I do not know they had just come. I was very busy starting playing majong. I do not want to have the case tried. Up to your honour to decide.' I therefore convict him to the offence charged."

It will be noted that the magistrate, rightly as he is empowered to do by section 161 Criminal Procedure Code (Cap. 58), delayed entering a plea until he had heard the police present the facts of the charge. At that point, however, and particularly after the appellant had made further remarks, it should have been clear that he (appellant) did not understand the nature of his plea, neither did he "intend to admit without qualification the offence alleged against him."

Accused's plea did not constitute an unequivocal plea of guilty. Moreover, the facts disclosed by the prosecution did not indicate that appellant's hotel was being used as a brothel, still less that it was so used with the knowledge or permission of the appellant. Evidence of persistent user is required to constitute premises a brothel. Because one hotel guest has illicit intercourse with one girl in a hotel bedroom, the hotel does not automatically become a brothel. Moreover, before convicting the hotel owner or occupier, the court must be satisfied of his guilty knowledge of the use of the hotel "as a brothel." The District Court record shows that essential ingredients of an offence were lacking, and, in effect, appellant had nothing to plead guilty to.

The trial must be regarded as a nullity. The conviction is quashed and sentence set aside. The police are in theory entitled to bring a fresh charge on the same facts, but they would be very ill-advised to do so without previously consulting the Attorney-General. Mr. Wan Alwi, representing the Attorney-General, has already conceded, and quite rightly, that the District Court record does not show that appellant's hotel was in fact used as a brothel.

Appeal allowed.

PILLAY v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) September 26, 1964]

[K.L. — Criminal Appeal No. 56 of 1964]

Employees Provident Fund Ordinance, 1951, ss. 16A (1) (c) & 18 (2) — Liability of manager of a company.

In this case the appellant who was the manager of Century Motors Ltd. was charged for failing to pay the provident fund contribution of an employee of the company. He was convicted and fined. On appeal,

Held: the manager or other officer in a corporate body is not liable unless he was personally at fault by some negligence or omission in the performance of his duties; although the proof that he was not to be blamed lies on him the burden of proof is a comparatively light one.

Case referred to:—

(1) *R.* v. *Carr-Briant* [1943] K.B. 607.

MAGISTRATE'S CRIMINAL APPEAL.

M. Rajah for the appellant.

Abdul Daim (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellant was charged in the Magistrate's Court at Ipoh under section 16A (1) (c) of the Employees Provident Fund Ordinance, 1951, as manager of Century Motors Ltd., for failing to remit the sum of $11 being the contribution of an employee, in respect of his wages for November 1963, which should have reached the Accountant of the Employees Provident Fund by December 31, 1963. He was convicted and sentenced to a fine of $100, in default one month's imprisonment. He now appeals against such conviction.

The material facts were not in dispute. The employer, Century Motors Ltd., is a small subsidiary company of Borneo Motors Ltd., and its primary object is to serve as a selling organisation for the parent company. Its accounting, personnel and administrative matters are handled entirely by Borneo Motors. The appellant was Ipoh branch manager of Century Motors since 1958. On October 1, 1963 he had engaged one Osman as a temporary substitute driver, who worked for four months, as an employee of

Century Motors. On January 16, 1964, an officer of the Labour Department inspected the wages and Employees Provident Fund records of the company and discovered that the November contribution of Osman had not been paid. The sum due was subsequently paid up on February 3, 1964. A complaint was laid against the appellant "as Manager of Century Motors Ltd." on April 7, 1964, which led to his prosecution and conviction.

The statutory offence under section 16A (1)(c) is one of strict liability and the conviction of Century Motors should have been inevitable upon mere proof of non-payment of any contribution due in respect of any of its employees. The plain duty of the labour officer, of course, was to lay a complaint against the true "employer" and the case could then have been easily disposed of in five minutes or less. Instead of taking this very obvious course, however, the complaint was directed against the company's manager, by invoking the provisions of section 18(2) of the Employees Provident Fund Ordinance, which reads:

"Where an offence under this Ordinance or any regulation or rule thereunder has been committed by a body corporate, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the body corporate, firm, society or other body of persons or was purporting to act in such capacity shall, as well as such body corporate, firm, society or other body of persons, be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances."

The sub-section makes it clear that the manager or other officer in a corporate body is not liable unless it can be said that he was personally at fault by some negligence or omission in the performance of his duties. Proof, however, that he was not to be blamed, lies on him, though the burden is a comparatively light one: see *Carr-Briant* [1] where it was said:

"In our judgment, in any case where, either by statute or at common law, some matter is presumed 'unless the contrary is proved,' the jury should be directed that it is for them to decide whether the contrary is proved, that the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt, and that the burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called upon to establish."

Here, the uncontradicted evidence of Mr. Dobson, the general manager of Century Motors in Singapore, had absolved the appellant of all responsibility for seeing that contributions were paid into the Employees Provident Fund. The appellant, according to him, was only a supervisor of the Ipoh branch. He was concerned only with sales and was not responsible for the payment of salaries of employees in Century Motors. They were paid by the parent company, Borneo Motors, through the latter's chief clerk or cashier, and all records of Century Motors employees were kept at all times at Borneo Motors. In the circumstances, I do not think the appellant can be said to have failed to have exercised "all diligence" required or expected of him in the performance of his duties. If the specific duty rested entirely on the shoulders of those in Borneo Motors charged with responsibility to pay into the Employees Provident Fund, there could be no failure on the part of the appellant in showing any diligence in the doing of what he was not expected to concern himself.

Justice is achieved in these cases of statutory strict liability by charging the company. To single out, instead, an officer of the company for punishment, unless he was in some way personally culpable, is on affront to the moral conscience.

The appeal is allowed, and the conviction quashed. The fine should be repaid. There is, of course, no reason why the Century Motors should not be proceeded against.

Appeal allowed.

SURIF v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) September 28, 1964]

[K.L. — Federal Court Criminal Appeal No. 45 of 1964]

Criminal Procedure — Evidence — Confession — Taking into consideration evidence of the accused against another — Evidence Ordinance, 1950, s. 30.

Evidence — Confession — Whether admissible against co-accused — Evidence Ordinance, 1950, s. 30.

Two accused persons were charged with robbery and convicted. The question raised in this appeal was whether the confession of the first accused was admissible in evidence and if it was admissible whether it was admissible against the co-accused, the appellant.

Held: (1) as the statement strongly suggested that the first accused had committed the offence of robbery, it was admissible as a confession of robbery;

(2) the learned trial judge was justified in taking into consideration the confession of the first accused against the second accused but it can only be used to support other evidence;

(3) as there was no other evidence to connect the second accused with the robbery, there was no evidence to support the confession.

[**Editorial Note:** In *Amin bin Mohamed* v. *R.* (1956), 2 M.C. 251, C.A. it was held that a statement made to a magistrate, or to anyone else, which amounts to an admission of being present at the scene of the crime and of accompanying the person or persons who committed the crime but which is otherwise exculpatory is entirely inadmissible as against a co-accused but is admissible against the person making it.]